



March 25, 2005

ENGROSSED

HOUSE BILL No. 1501

DIGEST OF HB 1501 (Updated March 22, 2005 11:41 am - DI 106)

Citations Affected: IC 5-22; IC 24-4.7; IC 24-5; IC 24-8; noncode.

Synopsis: Deceptive acts and attorney general's office. Requires a contractor that contracts with a governmental body certify that the contractor, the contractor's affiliates, and persons acting on behalf of the contractor or its affiliates have not violated the terms of the telephone privacy act in the previous year, and will not violate the terms of the telephone privacy act, telephone solicitation act, or automatic dialing act for the duration of the contract. Permits the attorney general institute a civil action to void a contract if the contractor: (1) falsely asserts past compliance with the telephone privacy act; or (2) violates the terms of the telephone privacy act, telephone solicitation act, or automatic dialing act while the contract is in effect. Excludes contracts where one party is a political subdivision from compliance with the telephone privacy contracting restrictions. Increases the amount of the civil penalty that the attorney general may recover for a violation of the deceptive consumer sales law. Authorizes the court to provide for the appointment of a receiver in an action brought by the attorney general to enjoin a deceptive act. Provides that the law regulating promotional gifts and contests applies to a notice of a promotion that is delivered by electronic mail or another form of electronic communication. Makes other changes.

Effective: Upon passage; July 1, 2005.

Yount, Thomas, Kuzman, Woodruff

(SENATE SPONSORS — SERVER, LANANE)

January 18, 2005, read first time and referred to Committee on Judiciary.
February 14, 2005, reported — Do Pass.
February 17, 2005, read second time, ordered engrossed.
February 18, 2005, engrossed.
February 21, 2005, read third time, passed. Yeas 96, nays 0.

SENATE ACTION

February 24, 2005, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

March 17, 2005, amended, reported favorably — Do Pass; pursuant to Senate Rule 65(b) reassigned to Committee on Corrections, Criminal, and Civil Matters.

March 24, 2005, amended, reported favorably — Do Pass.

EH 1501—LS 7506/DI 69+



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March 25, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1501

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-22-1-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE UPON PASSAGE]: Sec. 1. Except as provided in this
3 chapter, this article applies to every ~~expenditure~~ **use** of public funds by
4 a governmental body.
- 5 SECTION 2. IC 5-22-1-2 IS AMENDED TO READ AS FOLLOWS
6 [EFFECTIVE UPON PASSAGE]: Sec. 2. **(a)** Except as provided **in**
7 **subsection (b) and otherwise** in this article, this article does not apply
8 to the following:
- 9 (1) The commission for higher education.
10 (2) A state educational institution. However, IC 5-22-15 applies
11 to a state educational institution.
12 (3) Military officers and military and armory boards of the state.
13 (4) An entity established by the general assembly as a body
14 corporate and politic. However, IC 5-22-15 applies to a body
15 corporate and politic.
16 (5) A local hospital authority under IC 5-1-4.
17 (6) A municipally owned utility under IC 8-1-11.1 or IC 8-1.5.

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(7) Hospitals organized or operated under IC 16-22-1 through IC 16-22-5, IC 16-23-1, or IC 16-24-1.

(8) A library board under IC 20-14-3-14(b).

(9) A local housing authority under IC 36-7-18.

(10) Tax exempt Indiana nonprofit corporations leasing and operating a city market owned by a political subdivision.

(11) A person paying for a purchase or lease with funds other than public funds.

(12) A person that has entered into an agreement with a governmental body under IC 5-23.

(13) A municipality for the operation of municipal facilities used for the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste.

(b) IC 5-22-2-13.3 and IC 5-22-3-7 apply to the entities described in subsection (a).

SECTION 3. IC 5-22-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. **(a) Except as provided in subsection (b),** this article does not apply to the following types of activities:

(1) A contract between governmental bodies except for a contract authorized under this article.

(2) A public works project.

(3) A collective bargaining agreement between a governmental body and its employees.

(4) The employment relationship between a governmental body and an employee of the governmental body.

(5) An investment of public funds.

(6) A contract between a governmental body and a body corporate and politic.

(7) A contract for social services.

(b) IC 5-22-2-13.3 and IC 5-22-3-7 apply to:

(1) a contract;

(2) a project;

(3) an agreement;

(4) an employment relationship; or

(5) an investment;

described in subsection (a).

SECTION 4. IC 5-22-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. **Except as otherwise provided,** the definitions in this chapter apply throughout this article.

SECTION 5. IC 5-22-2-13.3 IS ADDED TO THE INDIANA CODE

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AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13.3. "In good standing" means that a contractor, or the contractor's principal if the contractor is not an individual, has certified under penalty for perjury under IC 35-44-2-1 as a term of its contract with the governmental body, that:

(1) the contractor:

(A) has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and

(B) will not violate the terms of:

(i) IC 24-4.7;

(ii) IC 24-5-12; or

(iii) IC 24-5-14;

for the duration of the contract, even if IC 24-4.7 is preempted by federal law; and

(2) no affiliate or principal of the contractor and no person acting on behalf of the contractor or on behalf of an affiliate or principal of the contractor:

(A) has violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and

(B) will violate the terms of IC 24-4.7 for the duration of the contract, even if IC 24-4.7 is preempted by federal law.

SECTION 6. IC 5-22-3-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) This section does not apply to a contract in which one (1) party is a political subdivision.

(b) A prospective contractor may not contract with a governmental body unless the prospective contractor is in good standing.

(c) The attorney general may bring an action in the circuit or superior court of Marion County to:

(1) void a contract under this section; and

(2) obtain other proper relief.

(d) A contract between a contractor and a governmental body is voidable at the election of the attorney general, if the attorney general establishes in a civil action that:

(1) the certification concerning compliance with IC 24-4.7, IC 24-5-12, or IC 24-5-14 is materially false; or

(2) the contractor, an affiliate or a principal of the contractor, or a person acting on behalf of the contractor or an affiliate

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or a principal of the contractor has violated the terms of IC 24-4.7, IC 24-5-12, or IC 24-5-14, even if IC 24-4.7 is preempted by federal law.

(e) If the attorney general establishes in a civil action that the contractor is knowingly, intentionally, or recklessly liable under subsection (d), the contractor is prohibited from entering into a contract with a governmental body for three hundred sixty-five (365) days after the date on which the contractor exhausts appellate remedies.

(f) In addition to any remedy obtained in a civil action brought under this section, the attorney general may obtain the following:

(1) All money the contractor obtained through each telephone call made in violation of the terms of IC 24-4.7, IC 24-5-12, or IC 24-5-14, even if IC 24-4.7 is preempted by federal law.

(2) The attorney general's reasonable expenses incurred in:

(A) investigation; and

(B) maintaining the civil action.

(3) Reasonable costs and attorney's fees.

SECTION 7. IC 24-4.7-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. A telephone solicitor who fails to comply with any provision of IC 24-4.7-4 commits a deceptive act that is actionable by the attorney general under this chapter. **In addition, a contractor who contracts or seeks to contract with the state:**

(1) may be prohibited from contracting with the state; or

(2) may have an existing contract with the state voided;

if the contractor, an affiliate or principal of the contractor, or any person acting on behalf of the contractor or an affiliate or principal of the contractor does not or has not complied with the terms of this article, even if this article is preempted by federal law.

SECTION 8. IC 24-5-0.5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) A person relying upon an uncured or incurable deceptive act may bring an action for the damages actually suffered as a consumer as a result of the deceptive act. The court may award reasonable attorney fees to the party that prevails in an action under this subsection. This subsection does not apply to:

(1) a consumer transaction in real property, except for purchases of time shares and camping club memberships; or

(2) a violation of:

(i) IC 24-4.7;

(ii) IC 24-5-12; or

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1 **(iii) IC 24-5-14.**

2 Actual damages awarded to a person under this section have priority
3 over any civil penalty imposed under this chapter.

4 (b) Any person who is entitled to bring an action under subsection
5 (a) on the person's own behalf against a supplier for damages for a
6 deceptive act may bring a class action against such supplier on behalf
7 of any class of persons of which that person is a member and which has
8 been damaged by such deceptive act, subject to and under the Indiana
9 Rules of Trial Procedure governing class actions, except as herein
10 expressly provided. The court may award reasonable attorney fees to
11 the party that prevails in a class action under this subsection, provided
12 that such fee shall be determined by the amount of time reasonably
13 expended by the attorney and not by the amount of the judgment,
14 although the contingency of the fee may be considered. Any money or
15 other property recovered in a class action under this subsection which
16 cannot, with due diligence, be restored to consumers within one (1)
17 year after the judgment becomes final shall be returned to the party
18 depositing the same. This subsection does not apply to a consumer
19 transaction in real property, except for purchases of time shares and
20 camping club memberships. Actual damages awarded to a class have
21 priority over any civil penalty imposed under this chapter.

22 (c) The attorney general may bring an action to enjoin a deceptive
23 act. However, the attorney general may seek to enjoin patterns of
24 incurable deceptive acts with respect to consumer transactions in real
25 property. In addition, the court may:

26 (1) issue an injunction;

27 (2) order the supplier to make payment of the money unlawfully
28 received from the aggrieved consumers to be held in escrow for
29 distribution to aggrieved consumers; ~~and~~

30 (3) order the supplier to pay to the state the reasonable costs of
31 the attorney general's investigation and prosecution related to the
32 action; **and**

33 **(4) provide for the appointment of a receiver.**

34 (d) In an action under subsection (a), (b), or (c), the court may void
35 or limit the application of contracts or clauses resulting from deceptive
36 acts and order restitution to be paid to aggrieved consumers.

37 (e) In any action under subsection (a) or (b), upon the filing of the
38 complaint or on the appearance of any defendant, claimant, or any
39 other party, or at any later time, the trial court, the supreme court, or the
40 court of appeals may require the plaintiff, defendant, claimant, or any
41 other party or parties to give security, or additional security, in such
42 sum as the court shall direct to pay all costs, expenses, and

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disbursements that shall be awarded against that party or which that party may be directed to pay by any interlocutory order by the final judgment or on appeal.

(f) Any person who violates the terms of an injunction issued under subsection (c) shall forfeit and pay to the state a civil penalty of not more than fifteen thousand dollars (\$15,000) per violation. For the purposes of this section, the court issuing an injunction shall retain jurisdiction, the cause shall be continued, and the attorney general acting in the name of the state may petition for recovery of civil penalties. Whenever the court determines that an injunction issued under subsection (c) has been violated, the court shall award reasonable costs to the state.

(g) If a court finds any person has knowingly violated section 3 or 10 of this chapter, the attorney general, in an action pursuant to subsection (c), may recover from the person on behalf of the state a civil penalty of a fine not exceeding five ~~hundred thousand~~ **(\$5,000)** dollars ~~(~~\$500~~)~~ per violation.

(h) An elderly person relying upon an uncured or incurable deceptive act, including an act related to hypnotism, may bring an action to recover treble damages, if appropriate.

SECTION 9. IC 24-5-12-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 23. A seller who fails to comply with any provision of:

(1) this chapter; **or**

(2) IC 24-4.7;

commits a deceptive act that is actionable by the attorney general under IC 24-5-0.5-4(c) and is subject to the penalties set forth in IC 24-5-0.5. **An action for a violation of IC 24-4.7 may be brought under IC 24-5-0.5-4(c) or IC 24-4.7-5.** An action by the attorney general for a violation of this chapter **or IC 24-4.7** may be brought in the circuit or superior court of Marion County.

SECTION 10. IC 24-8-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. Notice may be delivered by any of the following methods:

(1) Hand.

(2) Mail.

(3) Newspaper.

(4) Other periodical.

(5) Electronic mail or any other form of electronic, digital, or Internet based communication.

SECTION 11. [EFFECTIVE UPON PASSAGE] IC 5-22-1-2, IC 5-22-1-3, IC 5-22-2-1, IC 24-4.7-5-1, and IC 24-5-12-23, all as

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1 amended by this act, and IC 5-22-2-13.3 and IC 5-22-3-7, both as
2 added by this act, apply only to a contract entered into or renewed
3 after the effective date of this act.

4 SECTION 12. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1501, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

THOMAS, Chair

Committee Vote: yeas 11, nays 0.

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EH 1501—LS 7506/DI 69+



COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred House Bill No. 1501, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 5-22-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. Except as provided in this chapter, this article applies to every ~~expenditure~~ use of public funds by a governmental body.

SECTION 2. IC 5-22-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. **(a)** Except as provided **in subsection (b) and otherwise** in this article, this article does not apply to the following:

- (1) The commission for higher education.
- (2) A state educational institution. However, IC 5-22-15 applies to a state educational institution.
- (3) Military officers and military and armory boards of the state.
- (4) An entity established by the general assembly as a body corporate and politic. However, IC 5-22-15 applies to a body corporate and politic.
- (5) A local hospital authority under IC 5-1-4.
- (6) A municipally owned utility under IC 8-1-11.1 or IC 8-1.5.
- (7) Hospitals organized or operated under IC 16-22-1 through IC 16-22-5, IC 16-23-1, or IC 16-24-1.
- (8) A library board under IC 20-14-3-14(b).
- (9) A local housing authority under IC 36-7-18.
- (10) Tax exempt Indiana nonprofit corporations leasing and operating a city market owned by a political subdivision.
- (11) A person paying for a purchase or lease with funds other than public funds.
- (12) A person that has entered into an agreement with a governmental body under IC 5-23.
- (13) A municipality for the operation of municipal facilities used for the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste.

(b) IC 5-22-2-13.3 and IC 5-22-3-7 apply to the entities described in subsection (a).

SECTION 3. IC 5-22-1-3 IS AMENDED TO READ AS FOLLOWS

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[EFFECTIVE UPON PASSAGE]: Sec. 3. **(a) Except as provided in subsection (b)**, this article does not apply to the following types of activities:

- (1) A contract between governmental bodies except for a contract authorized under this article.
- (2) A public works project.
- (3) A collective bargaining agreement between a governmental body and its employees.
- (4) The employment relationship between a governmental body and an employee of the governmental body.
- (5) An investment of public funds.
- (6) A contract between a governmental body and a body corporate and politic.
- (7) A contract for social services.

(b) IC 5-22-2-13.3 and IC 5-22-3-7 apply to:

- (1) a contract;**
- (2) a project;**
- (3) an agreement;**
- (4) an employment relationship; or**
- (5) an investment;**

described in subsection (a).

SECTION 4. IC 5-22-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. **Except as otherwise provided**, the definitions in this chapter apply throughout this article.

SECTION 5. IC 5-22-2-13.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13.3. **"In good standing" means that a contractor, or the contractor's principal if the contractor is not an individual, has certified under penalty for perjury under IC 35-44-2-1 as a term of its contract with the governmental body, that:**

- (1) the contractor:**
 - (A) has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and**
 - (B) will not violate the terms of IC 24-4.7 for the duration of the contract, even if IC 24-4.7 is preempted by federal law; and**
- (2) no affiliate or principal of the contractor and no person acting on behalf of the contractor or on behalf of an affiliate or principal of the contractor:**
 - (A) has violated the terms of IC 24-4.7 in the previous**

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three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and

(B) will violate the terms of IC 24-4.7 for the duration of the contract, even if IC 24-4.7 is preempted by federal law.

SECTION 6. IC 5-22-3-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) This section does not apply to a contract in which one (1) party is a political subdivision.

(b) A prospective contractor may not contract with a governmental body unless the prospective contractor is in good standing.

(c) The attorney general may bring an action in the circuit or superior court of Marion County to:

- (1) void a contract under this section; and
- (2) obtain other proper relief.

(d) A contract between a contractor and a governmental body is voidable at the election of the attorney general, if the attorney general establishes in a civil action that:

- (1) the certification concerning compliance with IC 24-4.7 is materially false; or
- (2) the contractor, an affiliate or a principal of the contractor, or a person acting on behalf of the contractor or an affiliate or a principal of the contractor has violated the terms of IC 24-4.7, even if IC 24-4.7 is preempted by federal law.

(e) If the attorney general establishes in a civil action that the contractor is knowingly, intentionally, or recklessly liable under subsection (d), the contractor is prohibited from entering into a contract with a governmental body for three hundred sixty-five (365) days after the date on which the contractor exhausts appellate remedies.

(f) In addition to any remedy obtained in a civil action brought under this section, the attorney general may obtain the following:

- (1) All money the contractor obtained through each telephone call made in violation of the terms of IC 24-4.7, even if IC 24-4.7 is preempted by federal law.
- (2) The attorney general's reasonable expenses incurred in:
 - (A) investigation; and
 - (B) maintaining the civil action.
- (3) Reasonable costs and attorney's fees."

Page 3, after line 19, begin a new paragraph and insert:

"SECTION 9. [EFFECTIVE UPON PASSAGE] IC 5-22-1-2, IC 5-22-1-3, and IC 5-22-2-1, all as amended by this act, and

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IC 5-22-2-13.3 and IC 5-22-3-7, both as added by this act, apply only to a contract entered into or renewed after the effective date of this act.

SECTION 10. An emergency is declared for this act."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1501 as printed February 15, 2005.)

LONG, Chairperson

Committee Vote: Yeas 9, Nays 0.

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REPORT OF THE PRESIDENT
PRO TEMPORE

Madam President: Pursuant to Senate Rule 65(b), I hereby report that, subsequent to the adoption of the Corrections, Criminal, and Civil Matters Committee Report on March 17, 2005, Engrossed House Bill 1501 was reassigned to the Committee on Corrections, Criminal, and Civil Matters.

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred House Bill No. 1501, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 11, after "of" insert ":

(i)".

Page 3, line 11, after "IC 24-4.7" insert ";

(ii) **IC 24-5-12; or**

(iii) **IC 24-5-14;**".

Page 3, line 11, beginning with "for" begin a new line double block indented.

Page 3, line 36, after "IC 24-4.7" insert ", **IC 24-5-12, or IC 24-5-14**".

Page 3, line 41, after "IC 24-4.7," insert "**IC 24-5-12, or IC 24-5-14,**".

Page 4, line 9, after "IC 24-4.7," insert "**IC 24-5-12, or IC 24-5-14,**".

Page 4, between lines 14 and 15, begin a new paragraph and insert:
"SECTION 7. IC 24-4.7-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. A telephone solicitor who fails to comply with any provision of IC 24-4.7-4 commits a deceptive act that is actionable by the attorney general under this chapter. In addition, a contractor who contracts or seeks to contract with the state:

(1) may be prohibited from contracting with the state; or

(2) may have an existing contract with the state voided;

if the contractor, an affiliate or principal of the contractor, or any person acting on behalf of the contractor or an affiliate or principal of the contractor does not or has not complied with the terms of this article, even if this article is preempted by federal law."

Page 4, line 21, after "to" insert ":

(1)".

Page 4, line 22, delete "." and insert "; **or**

(2) a violation of:

(i) IC 24-4.7;

(ii) IC 24-5-12; or

(iii) IC 24-5-14."

Page 4, line 22, beginning with "Actual" begin a new line blocked left.

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Page 5, between lines 41 and 42, begin a new paragraph and insert:
 "SECTION 8. IC 24-5-12-23 IS AMENDED TO READ AS
 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 23. A seller who fails
 to comply with any provision of:

(1) this chapter; or

(2) **IC 24-4.7;**

commits a deceptive act that is actionable by the attorney general under
 IC 24-5-0.5-4(c) and is subject to the penalties set forth in IC 24-5-0.5.
An action for a violation of IC 24-4.7 may be brought under
IC 24-5-0.5-4(c) or IC 24-4.7-5. An action by the attorney general for
 a violation of this chapter or **IC 24-4.7** may be brought in the circuit
 or superior court of Marion County."

Page 6, line 10, after "IC 5-22-1-3," delete "and".

Page 6, line 10, after "IC 5-22-2-1," insert "**IC 24-4.7-5-1, and**
IC 24-5-12-23,".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to EHB 1501 as printed March 18, 2005.)

LONG, Chairperson

Committee Vote: Yeas 10, Nays 0.

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